In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 166.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners,

v.

INTERLAKE STEAMSHIP COMPANY, a corporation,

and

PICKANDS-MATHER & CO., a co-partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR RESPONDENTS.

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,

EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:

BAKER, HOSTETLER & PATTERSON,

NYE, SULLIVAN, McMILLAN,
HANFT & HASTINGS.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9447

TABLE OF CONTENTS.

TABLE OF AUTHORITIES.

Cases.

Statutes.

Congressional Reports.

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 166.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners,

v.

INTERLAKE STEAMSHIP COMPANY, a corporation,

and

PICKANDS-MATHER & CO., a co-partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR RESPONDENTS.

OPINIONS BELOW.

The Memorandum of the District Court of St. Louis County, State of Minnesota (R. 17-26) is unreported. The Opinion of the Supreme Court of Minnesota (R. 45-61) has not been officially reported but is reported at 108 N. W. 2d 627 (1961).

JURISDICTION.

The petition for a writ of certiorari to review the decision of the Supreme Court of Minnesota was filed within the time prescribed by 28 U. S. C. 2101(c). Petitioners severally claim immunity from the laws of the State of

Minnesota and from the jurisdiction of its courts. Consequently, this Court has jurisdiction under paragraph (3) of Section 1257, Title 28, United States Code.

STATUTES INVOLVED.

Sections 2(3), 2(5), 2(11) and 14(a) of the National Labor Relations Act[1] as amended by the Labor Management Relations Act, 1947; Act of June 23, 1947, c. 120, Title I, 61 Stat. 137, 138, 151; 29 U. S. C. 152(3), 152(5), 152(11), 164(a). The relevant provisions of the foregoing statutes are printed in Appendix A to this brief.

Petitioners' assertion that Sections 8(a)(3), 8(b)(2) and 8(b)(4)(A), (B) of the National Labor Relations Act, as amended are involved (Pet. Br. 2) is, we respectfully submit, predicated upon a misconception of the question presented.

QUESTION PRESENTED.

Whether the courts of the State of Minnesota had, or could exercise, jurisdiction in a case which, upon the allegations of the complaint and upon the facts established by the evidence and found by the Minnesota courts, involved an area of labor relations (i.e., relations between supervisors and their employers) which the Congress expressly excluded from the operation of the National Labor Relations Act, and from the jurisdiction of the National Labor Relations Board, by amendments made to that Act in Title I of the Labor Management Relations Act, 1947.

---

[1] In this Brief (a) the following abbreviations are sometimes used:

National Labor Relations Act	NLRA
National Labor Relations Board	NLRB
Petitioners' Brief	Pet. Br.
Findings	Fdg.

and (b) all emphasis is supplied unless otherwise expressly stated.

STATEMENT OF THE CASE.[2]

Respondents, Interlake Steamship Company (a corporation hereinafter called "Interlake") is the owner and Pickands-Mather & Co. (a partnership hereinafter called P-M) is the operator of a fleet of bulk cargo vessels which transports coal, iron ore and other bulk commodities in interstate and foreign commerce on the Great Lakes. (R. 29.) Petitioner, Marine Engineers Beneficial Association, Local 101 (hereinafter called "MEBA" or "Local 101") is a voluntary unincorporated association which admits to membership licensed marine engineers employed on commercial vessels operating on the Great Lakes. (R. 29.) While Petitioner, National MEBA, was also joined as a defendant, the activity or conduct, which constituted the

---

[2] Petitioners' Statement of the Case (Pet. Br. 2-4) does not cite, but wholly ignores, the amended and ultimate findings of fact which the trial court entered on March 16, 1960 after final hearing (R. 29-34) and includes assertions of alleged fact which are not supported by, but are contrary to, said findings. As support for such erroneous assertions of alleged fact, Petitioners cite, and in some instances also misstate or distort, (1) the Memorandum filed by the trial court on December 1, 1959 in connection with the preliminary hearing on the motion for a temporary injunction (R. 17-24); (2) a statement made by Respondents' counsel at said preliminary hearing which did not even constitute evidence except insofar as it contained admissions against interest (R. 24-6); and (3) two or three general statements appearing in the opinion of the Supreme Court of Minnesota as matters of background or in examining the parties' respective contentions (pp. 45-61).

Petitioners also improperly create confusion by using record citations to the *preliminary findings* entered *December 1, 1959*, on the motion for a temporary injunction (R. 8-13) to support *three sentences* in their Statement (Pet. Br. part of last 2 record citations on page 3 and of 1st record citation on page 4) instead of citations to the amended findings entered *March 16, 1960* after final hearing (R. 29-34).

If there is any inconsistency between the documents so cited by Petitioners and the final amended findings of the trial court, the latter obviously control. *Stone v. United States*, 164 U. S. 380, 383; *Fleischmann Co. v. United States*, 270 U. S. 349, 355; *United States v. Shoshone Tribe*, 304 U. S. 111, 115.

subject matter of the Minnesota case, was carried on by MEBA, Local 101. (R. 30-3; Fdgs. 5, 8, 12, 15, 16, 17.)

On November 11, 1959 Interlake's steamship Samuel Mather arrived at the dock of the Carnegie Dock & Fuel Company (hereinafter called "Carnegie") at Duluth, Minnesota, with a cargo of coal to be unloaded at the Carnegie Dock. The Carnegie employees, who commenced to unload the vessel shortly after its arrival, would ordinarily have completed such unloading in about 14 hours. (R. 30, Fdg. 4.)

About 6:30 A. M. on November 12, MEBA Local 101 caused five or six individuals to walk back and forth across the sole entrance to the Carnegie Dock (a private road) carrying signs which read:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> or
>
> "MEBA LOC. 101 AFL-CIO REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 30, Fdg. 4.)

From the time when the foregoing picketing began the Carnegie employees (who had entered the Carnegie premises and performed other duties for their employer notwithstanding such picketing) refused to carry out repeated orders to proceed with the unloading of the Samuel Mather and, for approximately two hours, independent truck drivers refused to cross the picket line to take delivery of coal from Carnegie. (R. 30, Fdgs. 6-7.)

On the morning of November 12, 1959 Petitioner LaPorte (agent and business representative of MEBA Local 101, R. 29), stated at or near the picket line that MEBA

Local 101 intended to picket all Interlake vessels which it could locate in the Duluth Harbor. (R. 31, Fdg. 8.)

After service of a temporary restraining order on the afternoon of November 12, 1959, formal picketing of the Carnegie premises was discontinued. However, the Carnegie employees continued their refusal to unload the Samuel Mather until some time after March 16, 1960 when the trial court, after a hearing on the merits, made and entered its ultimate findings and conclusions (R. 29, 34) and entered its order for a temporary injunction. (R. 31, Fdg. 10; R. 36.)

On the morning of November 15, 1959, Interlake Steamship Pickands arrived at Duluth with a cargo of coal for unloading at the Carnegie dock, which did not have facilities to unload more than one vessel at a time. Consequently, the Steamship Pickands was compelled to ride at anchor outside the harbor and wait for the unloading of the Samuel Mather (R. 31, Fdg. 10) which, as above noted, did not occur until some time after issuance of the temporary injunction.

About 11:00 P. M. on November 12, 1959, MEBA Local 101 picketed the entrance to the Duluth Plant of Interlake Iron Corporation where coal was being unloaded for use at that plant from Interlake's Steamship Mills. However, the picketing at that plant ceased approximately one hour after service of the temporary restraining order on said pickets; and none of the employees of Interlake Iron Corporation ceased work during such temporary picketing. (R. 31, Fdg. 11.)

Prior to commencement of the picketing at the Carnegie Dock on November 12, 1959, MEBA Local 101 had not communicated with, or made any demand or request whatsoever of, either Respondent. (R. 31, Fdg. 12.)

By thus preventing the steamships Samuel Mather and Pickands from unloading and reloading in regular

course, MEBA Local 101, and those acting in concert with it, inflicted a loss of $6000.00 a day, exclusive of profits, on Respondents; and if MEBA Local 101 carried out its threat to picket all Interlake vessels coming into Duluth harbor (R. 31, Fdg. 8), the result would be to interfere with the operations of a majority of Interlake's vessels. (R. 32, Fdg. 14.)

The duties, responsibilities and authority of all engineers and assistant engineers employed on Interlake vessels are stated in Finding 13 (R. 32), which reads:

> "13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard." (R. 32, Fdg. 13.)

Upon the foregoing facts the Minnesota courts concluded, as a matter of law, that the engineers and assistant engineers employed on all of Respondents' ships are "supervisors" as defined in Section 2(11) of the National Labor Relations Act, as amended. (R. 34, Conc. 2.)

The purposes and objectives of the picketing and activities of MEBA Local 101 were (1) to coerce Respondents, by injuring them in their business, to enter into an

agreement or understanding with MEBA Local 101 under which Respondents would require every licensed engineer hired after a specified date to become a member of Local 101 within 30 days after his employment as a condition of continued employment, (2) to coerce Respondents into interfering with the rights of Interlake engineers to join or not to join Local 101 by exercising force or compulsion on said engineers to become members of Local 101 and (3) to coerce and intimidate Respondents into recognizing MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels. (R. 32-3, Fdgs. 15-17.) Neither National MEBA nor Local 101 claimed to represent a majority of Interlake engineers or to be their authorized collective bargaining representative. (R. 33, Fdg. 19.) The activities of Petitioners did not include the use of violence or threats of violence. (R. 33, Fdg. 22.)

As conclusions of law the trial court held that all of the engineers and assistant engineers employed on Interlake vessels are "supervisors" as defined in the National Labor Relation Act, as amended; that the activities of Petitioner MEBA Local 101 and its associates set forth in the findings are excluded from the operation of the National Labor Relations Act, as amended, and from the jurisdiction of the National Labor Relations Board; that the activities of Petitioners violated the statutes and public policy of the State of Minnesota in the respects stated, and that the Minnesota Anti-Injunction Act was inapplicable and did not bar injunctive relief. (R. 34-5.)

The trial court granted a temporary restraining order on November 12, 1959, issued a temporary injunction on December 1, 1959 and issued a permanent injunction on March 28, 1960. (R. 15, 17, 41-2.) On March 30, 1961 the Supreme Court of Minnesota unanimously affirmed the decree of permanent injunction. (R. 46, 61.)

SUMMARY OF ARGUMENT.

A. As courts of general jurisdiction, the Minnesota courts had the power, and the duty, to decide all questions of fact and law upon which their jurisdiction, or their right to exercise jurisdiction, depended. Moreover, Petitioners do not, and could not successfully, challenge any of the findings below. While National MEBA was joined as a party defendant, the activity or conduct, which constituted the subject matter of the instant case, was carried on by MEBA Local 101. Nothing in the record showed that MEBA Local 101 admitted any non-supervisor employees to membership. All engineers and assistant engineers employed on Respondents' ships were supervisors as defined in Section 2(11) of the NLRA as amended. The picketing, which was carried on by MEBA Local 101, was directed exclusively (1) to coercing Respondents into exercising force or compulsion on their engineers and assistant engineers to become members of Local 101, and (2) to coercing and intimidating Respondents into entering into a "union shop" agreement with MEBA Local 101 under which Respondents would recognize MEBA Local 101 as the collective bargaining agent for the supervisor engineers employed on Respondents' ships.

B. The sole issues now before this Court are whether, upon the undisputed facts established by the findings below, the Minnesota courts correctly held, *first*, that all engineers and assistant engineers employed on Respondents' ships were supervisors within the meaning of Section 2(11) of the NLRA as amended; *second*, that the picketing, which was being carried on by MEBA Local 101 and was directed exclusively to labor relations between Respondents and their supervisor engineers, fell within an area of labor relations which the Congress had expressly excluded from the operation of NLRA as amended and

hence, from the jurisdiction of the NLRB; and *third*, that they (the Minnesota courts) had, and could properly exercise, jurisdiction to enjoin MEBA Local 101 and those acting in concert with it, from a continuing violation of the statutes in the public policy of the State of Minnesota. Each of the foregoing questions is purely a question of law.

C. In 1957, promptly after the decision of this Court in *Packard Co. v. Labor Board*, 330 U. S. 485, the Congress amended Sections 2(3), 2(5) and 2(11) of, and added Section 14(a) to, the NLRA of 1935 (the Wagner Act). The express and declared purpose of Congress in amending the foregoing Sections and in adding Section 14(a) was to exclude labor relations between supervisors and their employees from the operation of the NLRA and from the jurisdiction of the NLRB. The intent of Congress so to do is emphasized and made inescapably clear by the legislative history of the foregoing amendments and of Section 14(a).

D. A long settled principle for construing our dual constitutional system is that, when Congress exercises its paramount authority under the commerce power over a particular subject, the States are not barred from exercising their police power over the same subject in ways which do not conflict, and are not inconsistent, with the federal legislation. To bar the States from exercising power to that extent, congressional intent so to do must be clearly manifested and may not be based upon implication.

However, when Congress, in exercising its paramount authority under the commerce power to regulate a particular subject, expressly or affirmatively excludes part of that subject from federal regulation, the authority of the States to exercise their police power over the excluded part of the subject derives not only from the foregoing principle of constitutional interpretation but also is af-

firmatively authorized by the Congress. Manifestly, the doctrine of federal pre-emption cannot be invoked to bar the exercise of power by the States or their courts over part of a subject which the Congress has expressly excluded from federal regulation and generally restored to the States.

E. The doctrine of primary administrative jurisdiction, properly construed and applied, is merely part of the doctrine of federal pre-emption. It rests upon the hypotheses that, when Congress (with respect to a particular subject) (1) has prescribed (a) comprehensive substantive regulations, (b) specific remedies for their violation and (c) specific procedure for enforcing such remedies and (2) has created a special tribunal to administer the congressional legislative scheme subject only to a prescribed and limited judicial review, Congress intended to bar, and has barred, both federal and State courts from exercising original jurisdiction. Manifestly, however, the doctrine of primary administrative jurisdiction cannot be invoked to bar State courts from exercising their jurisdiction with respect to part of a subject which the Congress has expressly excluded from federal regulation no matter how comprehensive and detailed the congressional regulation of the remainder of the subject. No question of preventing conflict with, or of preserving the uniformity of, a policy declared by Congress can arise with respect to part of a subject which Congress has expressly excluded from its legislation. Obviously, the doctrine of primary administrative jurisdiction is inapplicable to the instant case. Moreover, that doctrine is inapplicable to the case at bar under the further established principle that the doctrine of primary administrative jurisdiction cannot be successfully invoked when a case presents solely a question or questions of law.

F. Petitioners' argument rests primarily upon the contention that the decision of the Minnesota courts conflicts with "doctrines of pre-emption" enunciated in *Garner v. Teamsters' Union*, 346 U. S. 485; *Weber v. Anheuser-Busch*, 348 U. S. 468; and *San Diego Council v. Garmon*, 359 U. S. 236. Each of those cases involved an area of labor relations which admittedly came within the operation of the NLRA as amended and with respect to which the Congress had provided comprehensive substantive regulations, detailed procedures and specific remedies and created a special tribunal to administer them subject only to prescribed and limited judicial review. Patently none of these cases is apposite; and none supports Petitioners' argument.

G. As a secondary argument, Petitioners contend at great length that the decision of the Minnesota courts conflicts with *National MEBA v. NLRB*, 274 F. 2d 167 and *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932. If this assertion were true, it would not follow that the decision of the Minnesota courts was wrong. However, for numerous reasons, which are set forth *infra*, p. 27, but which cannot be adequately set forth in a summary of argument, neither decision is apposite. The Second Circuit, although criticizing the fragmentary, outdated and inconclusive evidence upon which the Board had based its finding and conclusion, held that it could not say that such evidence was insufficient to support the Board's finding and conclusion under the limited statutory review provided by the Congress as construed by this Court in *Universal Camera Corp. v. NLRB*, 340 U. S. 474.

In the *Schauffler* case, the District Court merely held, in a hearing on a motion for preliminary injunction, that the facts adduced (although "not too clearly developed"),

were sufficient to justify issuance of a temporary injunction to preserve the status quo until the Board could investigate a charge pending before it.

Each case involved a limited review of a proceeding before the NLRB. In each case the record, although sketchy, showed that most engineers employed on the towboats and tugboats involved were not supervisors and that it was doubtful whether the other engineers were supervisors. Neither involved the question whether either a state or federal court can exercise jurisdiction to determine whether an action before it involves an area of labor relations which Congress has expressly excluded from the operation of NLRA as amended and hence, from the jurisdiction of the NLRB, and if the court finds upon the evidence before it that the case does fall within such an excluded area, exercise its jurisdiction.

H. Petitioners make no attempt to demonstrate that the engineers and assistant engineers employed by Respondents were not supervisors, that labor relations between supervisors and their employers are not excluded from the operation of the NLRA as amended or that the picketing of MEBA Local 101 was not exclusively directed to labor relations between Respondents and their supervisor engineers. Instead, Petitioners argue that if a union of supervisors elects to accept one or two non-supervisors as members, it can effectively circumvent and nullify the congressional exclusion of labor relations between supervisors and their employers from the operation of the NLRA as amended. Apart from the fact that there is no factual basis for this argument in the record of the case at bar, this Court will not permit, and *a fortiori*, will not aid, such a devious scheme to evade the clear intent of the Congress.

ARGUMENT.

I. THE AREA OF LABOR RELATIONS BETWEEN SUPERVISORS AND THEIR EMPLOYERS WAS EXPRESSLY EXCLUDED FROM THE OPERATION OF THE NATIONAL LABOR RELATIONS ACT, AND FROM THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD, BY THE AMENDMENTS MADE TO THAT ACT IN 1947 BY TITLE I OF THE LABOR MANAGEMENT RELATIONS ACT, 1947.

Prior to the decision of this Court in *Packard Co. v. Labor Board*, 330 U. S. 485 (Mar. 10, 1947), there was uncertainty as to whether supervisors were employees within the meaning of the National Labor Relations Act of 1935. In holding that supervisors were employees within the meaning of the 1935 Act, this Court relied upon the circumstance that the term "employee," as defined in the 1935 Act, included "any employee" without qualification, limitation or exception whatsoever and that supervisors are obviously employees both in common usage of the word "employee" and in its "most technical sense at common law." (l. c. 488.) Promptly after that decision, Congress enacted Title I of the Labor Management Relations Act, 1947, which amended the 1935 Act for the expressly declared purposes of excluding the area of labor relations between supervisors and their employers from the operation of that Act and of returning the regulation thereof to the several States. Sen. Rep. 105, 80th Cong. 1st Sess.; House Rep. 245, 80th Cong. 1st Sess.

First: Congress amended the definition of the term "employee" so that, so far as here material, it now reads (29 U. S. C. 152(3)):

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly

states otherwise, * * * *but shall not include* * * * *any individual employed as a supervisor*, * * *."

Thus, the Congress specifically excluded "supervisors" from the operation of the Act. While the following is not, we believe, of significant or controlling importance in the instant case, a further inevitable and intended effect of the foregoing definition of the term "employee" was to exclude any union of supervisors from the category of a "labor organization" as defined in Section 2(5), 29 U. S. C. 152(5) with respect to collective bargaining, organizational activities or any other facet of labor relations between supervisors and their employers. (App. B, 42, 44.)

Second: With respect to the meaning of the term "labor organization", Congress further provided that "When used in this subchapter" (i.e., NLRA, as amended):

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U. S. C. § 152(5), Act of June 22, 1947, 61 Stat. 136, 138.

Third: In order to avoid any possibility that the exclusion of supervisors from the operation of the 1935 Act as amended might be defeated or emasculated by some unforeseen construction of the term "supervisor," Congress incorporated in the 1935 Act a clear and specific definition of that term, which reads (29 U. S. C. 152(11)):

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, *or* discipline other employees, *or* responsibility to direct them, *or* to adjust their griev-

> ances, *or* effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

It will be noted that the congressional definition of the term "supervisor" is in the disjunctive and that, if an employee has authority to do any one of the things set forth in the definition, he is a supervisor. *NLRB v. Edward G. Budd Mfg. Co., et al.*, 169 F. 2d 571, 576 (6th Cir.), cert. den. 335 U. S. 908; *Ohio Power Co. v. NLRB*, 176 F. 2d 385, 387 (6th Cir.), cert. den. 338 U. S. 899; *NLRB v. Fullerton Pub. Co.*, 283 F. 2d 545, 548 (9th Cir.).

In the instant case the Minnesota Courts found:

> "13. All engineers and assistant engineers employed on Interlake vessels stand watches during which they are in charge of and responsible for the operation and condition of the vessel's propulsion mechanism and responsibly direct, control and supervise the work of the firemen, oilers and coal passers on duty during such watch; they hire, fire, transfer and change the status of and discipline the persons working under them and have authority to and do make effective recommendations respecting the employment and tenure of employment of the people working under them; they handle initially grievances of the employees who are subject to their supervision; the exercise of authority by the engineers and assistant engineers requires the use of independent judgment and discretion; and all such engineers are required to be licensed by the United States Coast Guard." (R. 32, Fdg. 13.)

Petitioners do not, and could not successfully, challenge the foregoing (or any other) finding of fact made by the Minnesota courts. Consequently, that all of the engineers employed on steamships owned by Interlake and operated

by P-M were supervisors, is conclusively established for the purposes of the instant case.

Fourth: In 1947 Congress further amended the 1935 Act by adding thereto a new section, which reads:

> "*Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization*, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." Act of June 23, 1947, ch. 120, Title I, § 14(a), 61 Stat. 136, 151, 29 U. S. C. 164(a).

Manifestly, Congress shared common knowledge that an employer would not and could not employ supervisors unless he also had other employees to be supervised whose labor relations would necessarily come within the operation of the NLRA as amended. Consequently, to hold that the italicized language in the above quotation of Section 14(a) was intended to nullify, or has the effect of nullifying, the exclusion of labor relations between supervisors and their employers from the operation of NLRA, as amended, whenever a supervisor or supervisors choose to become or remain a member of a union whose membership also includes some nonsupervisory employees, would indefensibly attribute to the Congress the doing of a vain and futile thing.

The purposes of Congress in enacting Section 14(a) were, *first*, to make certain that the Act, as amended, or its mere existence, would not be held to prohibit supervisors from becoming or remaining members of a labor organization where permitted by State law, and, *second*, that nothing in the NLRA as amended *or in State law* should be effective to require employers to bargain collectively with

supervisors who, in the opinion of Congress, act as representatives or agents of their employer. Congress deemed the principle, that an employer should not be compelled to "have as his agent one who is obligated to those on the other side" (App. B 42, 43), so important that, in returning supervisors "to the basis which they enjoyed before the passage of the Wagner Act" (App. B 44), Congress expressly provided that an employer should not be compelled "to treat supervisors as employees for the purpose of collective bargaining or organizational activity" (App. B 42, 43, 44), for the "purpose of any law, either national or *local*, relating to collective bargaining."

The language by which Congress undertook to exclude labor relations between supervisors and their employers from the operation of the NLRA as amended and from the jurisdiction of the NLRB, is too clear to justify or require resort to legislative history. *Ohio Power Co. v. NLRB*, 176 F. 2d 385, 387, cert. den. 338 U. S. 899. However, were that language otherwise open to a different interpretation, the intent of Congress to exclude the area of labor relations between supervisors and their employers from the operation of the Act and from the jurisdiction of the Board is conclusively shown by the legislative history of the 1947 amendments to that Act. (App. B 42-44.)

As aptly stated by Judge Clark in *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2nd Cir.) at 339:

> "* * * The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or its state law equivalent. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the

to exercise their jurisdiction in deference to the substantive regulation, procedure, remedy and tribunal provided by the Congress.

San Diego Unions v. Garmon, 359 U. S. 236, likewise involved an area of labor relations which admittedly fell within the detailed federal regulation provided by the Congress. After instituting a representation proceeding before the National Labor Relations Board and while that proceeding was still pending, Garmon brought an action in a California court which granted an injunction and awarded damages upon the ground that the interim declination of jurisdiction by the NLRB permitted a State court to exercise jurisdiction. When that judgment was reviewed in *San Diego Unions v. Garmon*, 353 U. S. 26, this Court reversed the decree of injunction upon the ground that the refusal of the NLRB to assert jurisdiction did not leave with the States power over activities which otherwise would be pre-empted from State regulation but remanded the case to the California court with directions to consider and decide the questions of State law which were relevant to the award of damages.

When the subsequent judgment of the State court sustaining the award of damages was reviewed in *San Diego Unions v. Garmon*, 359 U. S. 236, this Court held that the California court could not award damages for conduct which, as had been held on the first review, the California court could not enjoin.

The rationale of this holding, as we read the decision, was that conduct can be as effectively regulated by a system of awarding damages as by direct preventive relief and, consequently, that a State court could not exercise its jurisdiction to award damages for conduct with respect to which the Congress had provided comprehen-

sive substantive regulation, detailed procedure, specific remedy or remedies, and a special tribunal to administer them.

It is, we submit, manifest that nothing in the *Garner Weber* or *Garmon* decisions supports Petitioners' contention that the decision of the Minnesota courts conflicted with the doctrines of pre-emption enunciated in those cases.

1. *The Asserted Conflict Between the Decision of the Minnesota Courts and Two Decisions of Lower Federal Courts Is Without Substance: National MEBA v. NLRB*, 274 F. 2d 167 (2nd Cir.), involved activities of a co-operative organization (called the "Rivers Joint Organizing Committee" or RJOC), which had been set up by MEBA and two other unions for the purpose of carrying out a joint effort to organize "the *entire crews* of commercial vessels on the Mississippi and its tributaries." (l. c. 168-9.)[5] The specific activity of RJOC, which was involved in the proceeding being reviewed by the Second Circuit, was directed to organizing the entire *crews* of two tow-boats which were operated by the S & S Towing Company (hereinafter called "S&S"), principally on the Illinois River. The engineers employed on one tow-boat had no one to supervise and no supervisory duties or authority. Of the three engineers employed on the other tow-boat, at least one seemingly had no supervisory duty or authority

---

[5] As noted, *supra*, p. 18, fn. 3, the NLRB had emphasized the wide and controlling distinction between the supervisor status of engineers and assistant engineers employed on the bulk cargo ships of Respondents and of other bulk cargo carriers on the Great Lakes and the generally non-supervisor status of such engineers, if any, as are employed on towboats, tugboats and motor boats operating on rivers and other restricted inland waters.

basis which they enjoyed before the passage of the Wagner Act.'

* * * * *

Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining."

II. THE MINNESOTA COURTS HAD, AND PROPERLY EXERCISED, JURISDICTION IN THE INSTANT CASE; AND PETITIONERS' ARGUMENTS TO THE CONTRARY ARE BASED UPON THE APPLICATION OF ERRORS OF LAW TO AN UNSUPPORTED AND ERRONEOUS ASSUMPTION OF FACT.

A. The Issue as Defined and Delimited By the Facts Alleged, Proved and Found in the Minnesota Courts.

All engineers and assistant engineers employed on Respondents' steamships are supervisors (R. 32, Fdg. 13; R. 34, Concl. 2). The evidence showed, and the Minnesota courts found, only that MEBA Local 101 "admits to membership licensed marine engineers employed on commercial vessels on the Great Lakes" (R. 39, Fdg. 2).[3]

The activities of MEBA Local 101, which constituted the subject matter of the instant case, were directed exclusively (1) to coercing Respondents into an agreement or understanding with MEBA Local 101 which would establish a "union shop" for Respondents' engineers, (2)

---

[3] The size of commercial vessels operating on the Great Lakes and their crews are such that all engineers and assistant engineers employed thereon are supervisors as defined in Section 2(5) of the NLRA as amended. *Globe Steamship Co., et al.*, 85 NLRB 475; *The Cleveland Cliffs Iron Co.*, 117 NLRB 668; *Hutchinson & Co., et al.*, 101 NLRB 90. The wide distinction between engineers employed on such commercial vessels and engineers employed on tugboats or towboats operating on rivers or other enclosed waters is emphasized in *Graham Transportation Co.*, 124 NLRB 960 at 962, which Petitioners cite (Pet. Br. 16-7).

to coercing Respondents into exercising force or compulsion on their engineers to become members of MEBA Local 101 and (3) to coercing and intimidating Respondents into recognizing MEBA Local 101 as the collective bargaining agent for the engineers and assistant engineers employed on Respondent's steamships. (R. 32-3, Fdgs. 15-17.)

As courts of general jurisdiction, the Minnesota State courts had power, and the duty, to decide all questions of fact and law upon which their jurisdiction, or their right to exercise jurisdiction, in the instant case depended. *Texas & Pacific Ry. v. Gulf etc. Ry. Co.*, 270 U. S. 266; *Minneapolis etc. Co. v. Peoria etc. Co.*, 270 U. S. 580; *Stoll v. Gottlieb*, 305 U. S. 165.

Petitioners do not cite, and we are not aware of, any decision of this Court which holds that the foregoing fundamental principle does not apply to an action brought in the State courts merely because its subject matter involves some phase of labor relations. Instead, in cases coming before this Court where the question is whether a State Court could properly exercise its jurisdiction in a case whose subject matter admittedly fell within an area of labor relations covered by the National Labor Relations Act as amended, there is no suggestion that the foregoing fundamental principle is not applicable or that the facts alleged or properly found in the State Court did not define and delimit the issue as to whether the State Court could properly exercise its jurisdiction.[4] E.g., see, *Weber v. Anheuser-Busch*, 348 U. S. 468, 481.

---

[4] As noted *supra* 3, fn. 2, Petitioners' Statement of the Case, among other defects, includes assertions of alleged facts which are not supported by, but are contrary to, the findings entered on final hearing and, in some instances, even misstate the alleged authority for such assertions. In Petitioners' Argument one of such erroneous assertions becomes:

(Continued on following page.)

Consequently, upon the facts alleged, established by the evidence and found by the Minnesota courts, the sole issues before this Court are whether the Minnesota Courts correctly held, *first*, that all engineers and assistant engineers employed on Respondents' ships are supervisors within the meaning of Section 2(11) of the NLRA as amended, *second*, that the subject matter of the instant case fell within an area of labor relations which the Congress expressly excluded from the operation of the NLRA as amended and from the jurisdiction of the NLRB and *third*, that they had, and could properly exercise, jurisdiction to enjoin MEBA Local 101 and its associates from a continuing violation of the statutes and public policy of the State of Minnesota.

Manifestly, each of the foregoing questions presents *a pure question of law*. Neither involves any issue of fact and, *a fortiori*, neither presents a factual issue which is not within the conventional experience of judges, which requires or permits the exercise of administrative discretion or which involves or permits the exercise of administrative expertise either actual or resting upon legislative fiat. There can be no interference with national policy, or the uniformity of national policy, in a field of labor relations which the Congress has expressly excluded from federal regulation.

(Continued from preceding page.)

"In the opinion of the trial court the record 'is clear that its [MEBA] membership is composed primarily and almost exclusively of supervisors,' (R. 18) * * *" Pet. Br. 9.

The sentence, which Petitioners thus purport to quote from the trial court's preliminary Memorandum on the motion for a preliminary injunction, actually reads:

"*The record in this case does not show that MEBA Local 101 admits to membership any nonsupervisory employees,* [fol. 35] and in any event it is clear that its membership is composed primarily and almost exclusively of supervisors." (R. 18.)

B. The Doctrine of Federal Pre-emption is Wholly Inapplicable.

Apart from the limited (and here irrelevant) area of labor relations covered by the Railway Labor Act, the field of labor relations was governed, prior to the passage of the National Labor Relations Act of 1935 (the Wagner Act), by the common law, statutes and public policy of the several States as interpreted and enforced by their respective courts. The Wagner Act was an exercise of the constitutional authority of Congress to regulate interstate and foreign commerce. *Labor Board v. Jones & Laughlin*, 301 U. S. 1. Federal regulation of labor relations was sustained not because they constituted interstate commerce but because they affected interstate commerce which the Congress had constitutional authority to protect and promote. Labor relations did not, and do not, constitute a field in which, even where Congress has been silent, the States may not act at all. Consequently the effect of congressional legislation in this field upon the authority of the States to exercise their police power must be determined by the application of principles by which our dual constitutional system has been construed throughout our national history.

First, when Congress legislates in a particular field, congressional intent to bar the States from exercising their police power in ways which do not conflict, and are not inconsistent, with the federal legislation, will not be inferred from its mere enactment. Congressional intent so to do must be clearly manifested and may not be based upon implication. *Savage v. Jones*, 225 U. S. 501, 533-9; *Illinois Central R. Co. v. Public Utilities Comm.*, 245 U. S. 493, 510. *Townsend v. Yeomans*, 301 U. S. 441, 454; *Kelly v. Washington*, 302 U. S. 1, 10.

Second, the authority of the Congress to exercise part, but not all, of its constitutional power to regulate particular subject matter and, *a fortiori*, to exclude part of that subject matter from federal regulation, has never been questioned or doubted. When the Congress chooses to exercise less than the full scope of its constitutional authority in a particular field, the congressional legislation may not be construed as barring the States from exercising their police power in that field in any way which does not conflict, and is not inconsistent, with the federal legislation unless the Congress expressly declares its intent so to do. Congressional power to exercise its paramount authority in a particular field carries with it congressional authority to limit federal regulation or, otherwise stated, to exclude part of the field from federal legislation. In that situation the right of the States to exercise their police power in the excluded area of the field rests not only upon fundamental principles of constitutional interpretation but upon the affirmative action of the Congress. *A. T. & S. F. R. Co. v. Railroad Comm.*, 283 U. S. 380, 392, 393. *A. C. L. v. Georgia*, 234 U. S. 280, 290; *Gilvary v. Cuyahoga Valley R. Co.*, 292 U. S. 57, 60. See also, *Co-op Refining Corp. v. Williams*, 185 Kansas 410, 345 P. 2d 709, cert. den. 362 U. S. 920; *McLean Co. v. Brewery, etc. Drivers Local 993*, 254 Minn. 204, 94 N. W. 2d 514, cert. den. 360 U. S. 917.

Even with respect to the area of labor relations which admittedly falls within the scope of the National Labor Relations Act, this Court has repeatedly said, in varying language, that the "Congress did not exhaust the full sweep" of its constitutional authority and left "much to the States." *Weber v. Anheuser-Busch*, 348 U. S. 468, 480; *Garner v. Teamsters Union*, 346 U. S. 485, 488; *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 253, 254; *Machinists v. Gonzales*, 356 U. S. 617, 619. By the 1947

amendments to the National Labor Relations Act of 1935 the Congress expressly excluded labor relations between supervisors and their employers from federal regulation under that Act. *Supra*, pp. 13-18. Manifestly, the doctrine of federal pre-emption cannot be successfully or rationally invoked to bar State Courts from exercising their jurisdiction to enforce the statutes or public policy of the States in an area of labor relations which the Congress has specifically and intentionally excluded from federal regulation.

C. The Doctrine of Primary Administrative Jurisdiction is Plainly Inapplicable.

The doctrine of primary administrative jurisdiction rests upon the hypotheses that a particular case raises issues of fact which are not within the conventional experience of judges, which require the exercise of administrative discretion, or which require the exercise of administrative expertise by agencies to which the Congress has entrusted regulation of the subject matter. Fundamentally, the doctrine of primary administrative jurisdiction rests upon the same foundation as does the doctrine of federal preemption and assumes that its application is required to give effect to a clearly expressed intent of the Congress. It is not, we believe, a tool devised by the courts to minimize their burdens in performing their judicial functions. Even where the subject matter of a case clearly falls within the area of a field covered by congressional legislation the administration of which Congress has entrusted primarily to an administrative agency, the doctrine does not apply when the issue presented is solely a question of law. *W. P. Brown & Sons Lbr. Co. v. L. & N. R. Co.*, 299 U. S. 393, 398; *B. & O. R. Co. v. Brady*, 288 U. S. 448, 457.

In the case at bar, the questions presented are whether, upon the facts established by the evidence and the findings, the Minnesota Courts correctly decided certain pure questions of law. *Supra*, pp. 18-20. Plainly, the instant case does not raise any issue which is not within the conventional experience of judges, which requires or permits the exercise of administrative discretion or which involves the exercise of any administrative expertise, either real or fictional and no conceivable basis exists for application of the doctrine of primary administrative jurisdiction. Indeed, to hold to the contrary would require a court to nullify the declared intent of the Congress and to amend the statute by a process of judicial legislation.

D. Petitioners' Arguments That Either the Doctrine of Federal Pre-emption or the Doctrine of Primary Administrative Jurisdiction Barred the Minnesota Courts From Exercising Their Jurisdiction in the Instant Case, are Without Substance.

Petitioners' primary argument is that the decision of the Minnesota courts conflicts with "doctrines of pre-emption" enunciated by this Court in *Garner v. Teamsters Union*, 346 U. S. 485, *Weber v. Anheuser-Busch*, 348 U. S. 468 and *San Diego Council v. Garmon*, 359 U. S. 236. To demonstrate the fallacy in Petitioners' reliance upon those cases it is sufficient to point out that none of them involved the question whether State courts can exercise their jurisdiction in a case whose subject matter is an area of labor relations which the Congress expressly excluded from federal regulation. If, as hereinafter shown, the Minnesota courts correctly held that the instant case involves subject matter which the Congress expressly excluded from federal regulation, it is idle to argue that the exercise of their jurisdiction was barred by doctrines of fed-

eral pre-emption or primary administrative jurisdiction. Obviously, under the National Labor Relations Act, as amended, the area of labor relations between supervisors and their employers is "governable by the State or it is wholly ungoverned." *Auto Workers v. Wisconsin Board*, 336 U. S. 245, 254.

Garner v. Teamsters Union, 346 U. S. 485, involved labor relations between nonsupervisor employees and their employer and fell within the area of labor relations with respect to which the Congress had provided detailed substantive regulations, had prescribed comprehensive remedies for a violation of the substantive regulations, had prescribed the procedure for invoking and implementing those remedies, and had expressly entrusted the administration of this comprehensive legislation to a specially constituted tribunal, to wit, the National Labor Relations Board. As we read the *Garner* case, it merely holds that the States cannot provide supplementary, additional or different remedies and tribunals for dealing with the same conduct as that with respect to which the Congress has comprehensively legislated.

Weber v. Anheuser-Busch, 348 U. S. 468, also involved an area of labor relations which the Congress had specifically and completely regulated in the National Labor Relations Act. Indeed, the complaint in the State court alleged that the defendant Union had violated several provisions of the National Labor Relations Act, as amended. As we read the *Weber* case this Court merely held that, where an action in a State court involves an area of labor relations which is admittedly covered by the federal Act, and conduct which is arguably protected by Section 7, or arguably prohibited by Section 8, of the National Labor Relations Act, as amended, the State courts must decline

(l. c. 172); Intermediate Report of Trial Examiner, *National Maritime Union, et al.*, 121 NLRB 208 at 213, 219. Moreover, the activities of MEBA and the other unions acting jointly through RJOC were directed to organizing the "*entire crews*" which obviously included crew members, who admittedly were not supervisors.

In this aspect of the review proceeding, the sole question before the Second Circuit was whether the finding and conclusion of the Board, that MEBA and MMP, when participating in the joint organizing efforts carried on through RJOC, were severally acting as a "labor organization" within the meaning of Section 8(b) of NLRA, was supported by evidence. After criticizing the fragmentary, dubious and outdated evidence upon which the Board had based its finding and conclusion, the Court noted that MEBA had failed to introduce rebutting evidence which, if it existed, was plainly within its knowledge and under its control (l. c. 174-5), and said:

> "We therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in Universal Camera Corp. v. N. L. R. B., 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA and MMP are or are not in fact 'labor organizations' within the meaning of § 8(b) today.* We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957." (l. c. 175.)[6]

---

[6] In the course of its opinion in the above case, the Second Circuit also said:

> "Of course, determination that a union is a "labor organization" because "employees participate" is only the beginning of the inquiry, not the end. For in the case of many practices spelled out in § 8(b), it is necessary not only that "employees participate" in the organization charged but also that the conduct deal with "employees." (l. c. 173.)

(Continued on following page)

In *United States v. National MEBA, et al.*, 294 F. 2d 385 (2d Cir.) that Court, speaking through the same Judge, said:

> "In National Marine Engineers Beneficial Ass'n v. N. L. R. B., 2 Cir., 1960, 274 F. 2d 167, *though we accepted the proposition that a union comprised wholly of supervisors would not be a 'labor organization' within § 8(b) of the National Labor Relations Act, 29 U. S. C. A. § 158(b)*, we held that, *on the facts there presented*, the Board was justified in finding that non-supervisory employees participated in these two unions and hence in holding them within that section." (l. c. 390.)

Manifestly, the careful circumscribed holding of the Second Circuit related to a wholly different issue and a wholly different factual situation than those presented in the instant case. Since Section 14(a) provides that "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization," Congress manifestly contemplated supervisors might become or remain members of a labor organization or union either in a separate local or on an integrated basis. Obviously, when a union whose membership includes both employees and supervisors engages in activity directed to labor relations between employees

---

(Continued from preceding page)

Since the object and purpose of the activities being carried on by the unions participating in RJOC were to organize the "entire crews" employed on towboats and tugboats, their conduct obviously dealt with "employees." However, upon the question whether the subject matter of a State case falls within an area of labor relations which Congress has excluded from the NLRA as amended, manifestly the answer does not turn, as Petitioners argue, upon an interpretation of the term "labor organization" as used in § 8 of the NLRA as amended. In the instant case, there was no proof of participation or membership by "employees" in MEBA Local 101; and the conduct of MEBA Local 101 was directed exclusively to labor relations between Respondents and the engineers employed on their ships, all of whom were and are supervisors.

and their employers, it is acting as a labor organization and its conduct may be such as to be prohibited by Section 8(b) or to be protected by Section 7.

However, to hold that when such a union engages in activities directed exclusively to labor relations between supervisors and their employers, such activities are governed by the NLRA and pre-empted from State jurisdiction, would completely nullify the clear congressional purpose to exclude labor relations between supervisors and their employers from federal regulation and, except as expressly limited, to leave their regulation to the States. Such a construction of the congressional language, where otherwise permissible, is precluded by established principles of statutory interpretation. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3. Plainly, Petitioners' argument, that the inclusion of one or two employees among the membership of a union of supervisors defeats the congressional intent and deprives States of jurisdiction, is untenable and, if accepted, would enable supervisors, by a very simple device, to evade their exclusion from the NLRA, as amended. *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2nd Cir.) at 336. Moreover, to establish that such a union is acting in a particular situation as a "labor organization" within the meaning of Section 2(5), the evidence must establish that its membership "includes, in substantial number or proportion, persons who are employees" and who participate in the union "in a substantial and meaningful manner." *International Masters, Mates and Pilots v. NLRB*, not officially reported, 2 Labor Rel. Rep. (48 LRRM) 2624 (D. C. Cir.).

Schauffler v. Local 101 MEBA, 180 F. Supp. 932 (E. D. Pa.), which Petitioners also cite (Pet. Br. 5, 13-4), involved a preliminary and even more tentative holding in

a hearing on a petition by the NLRB for a temporary injunction to preserve the status quo pending investigation of a complaint by the Board. The facts, which were "not too clearly developed" (l.c. 935), were, the Court thought, sufficient to show that the Board "had reasonable cause to believe" that the two engineers employed on one of the employer's tugs probably were not supervisors, that no engineers were employed on the other three tugs or on the five barges operated by the employer and that engineers could be hired and used in inferior jobs, such as deck-hands or other ship employees. (l. c. 933-4; Fdgs. 4(c), 5, 9; l. c. 935, par 5[1].)

Petitioners' contention, that the decision of the Minnesota courts conflicts with the foregoing decisions of the Second Circuit and of a District Court in Pennsylvania, is plainly fallacious.

First, an indispensable foundation for Petitioners' contention is that MEBA Local 101, although "composed primarily and almost exclusively of supervisors" (Pet. Br. 9), may have two or three members who are not supervisors. Were it material, this factual assumption conflicts squarely with the facts found in the instant case which Petitioners do not, and could not successfully, challenge. *Supra* p. 15.

Second, neither the 2nd Circuit case nor the *Schauffler* case involved the question whether a State court could have exercised its jurisdiction even upon factual bases such as were presented in those cases and, *a fortiori*, upon the wholly different factual bases established in the Minnesota case.

Third, if, as hereinafter shown, the Minnesota courts correctly held that the subject matter of the instant case fell within an area of labor relations which the Congress expressly excluded from federal regulation under the

NLRA as amended, it would be immaterial whether MEBA Local 101, by engaging in different conduct for some different purpose, might be found to be acting as a "labor organization" within the meaning of Section 8(b) or might be subject to some other federal statute such as the National Emergency provisions of Title II of the Labor Management Relations Act, 1947.

The courts will not permit MEBA or MEBA, Local 101, to defeat the plain congressional purpose by claiming without proof, whenever its conduct is under scrutiny in a State court, that it may have some nonsupervisor members or may sometimes have engaged in different conduct or activities which fell within Section 8(b)—or by claiming, whenever it engages in activities involving labor relations between "employees" and their "employers" as defined in the NLRA, as amended, that its conduct is exempt from federal regulation because it is a union of supervisors. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3. Judicial approval of such a theory would be to hold that the Congress, by excluding labor relations between supervisors and their employers from the NLRA and remitting their regulation to the States, in fact intended to leave this area of labor relations wholly ungoverned.

Fourth, if, as hereinafter shown, the Minnesota courts correctly held upon the uncontroverted facts that the instant case fell within an area of labor relations which the Congress excluded from the NLRA, it is immaterial whether some or all of the reasons assigned by the Minnesota courts for reaching a correct decision was or were erroneous.

Fifth, each of the cases cited by Petitioners involved review of proceedings theretofore had or simultaneously pending before the National Labor Relations Board. It

may be conceded that when a proceeding is instituted before that Board, it has jurisdiction to determine (subject to review by a federal court of appeals and ultimately by this Court) whether the facts bring the proceeding within the scope of the NLRA, as amended, and hence within the jurisdiction of the Board. However, that is a far cry from the seeming assertion of Petitioners that State courts cannot exercise their jurisdiction in a case where the proof establishes that the subject matter falls within an area of labor relations which the Congress has expressly excluded from the NLRA, as amended, and hence from the jurisdiction of the NLRB.

III. THE MINNESOTA COURTS PLAINLY HAD, AND PROPERLY EXERCISED, JURISDICTION IN THE CASE AT BAR.

The bill which became the Labor Management Relations Act, 1947, included five Titles which covered different subjects all or some of which could as well have been dealt with in separate bills. We are here concerned only with Title I, which amended the National Labor Relations Act of 1935 in the respects which are controlling in the case at bar. Both the language and legislative history of these amendments make inescapably clear the intent of Congress to exclude labor relations between supervisors and their employers from the NLRA and hence, from the jurisdiction of the National Labor Relations Board. *Supra*, pp. 16-17. If, contrary to our belief, the language used by the Congress to effect this exclusion were otherwise ambiguous, this Court would not permit any ineptness of language, or the literal construction of particular phrases, to defeat the congressional intent. *United States v. Ryan*, 350 U. S. 299, 305-7; *United States v. National MEBA*, 294 F. 2d 385, 390-3.

The facts alleged, shown by the evidence and found by the Minnesota courts, establish only that MEBA local 101 admits to membership licensed marine engineers employed on the large bulk cargo freighters operating on the Great Lakes. All engineers and assistant engineers employed on Respondents' ships were and are supervisors. Even if, contrary to the fact, MEBA Local 101 had shown that its membership included some "employees" as defined in the NLRA, as amended, the activities of MEBA Local 101, which were the subject matter of the instant case, were directed exclusively to coercing the Respondents into recognizing Local 101 as the collective bargaining representative of the supervisor-engineers employed on Respondents' ships and to coercing such supervisor-engineers into becoming members of MEBA Local 101. *Supra*, pp. 6-7. Manifestly, upon the facts alleged, proved and found in the instant case, both MEBA Local 101 and the activities in which it was engaged, fell, *as a matter of law*, within an area of labor relations which the Congress had specifically, deliberately and intentionally excluded from the operation of the NLRA, as amended, and hence, from the jurisdiction of the NLRB.

Exercising jurisdiction in an area of labor relations which Congress had so excluded from the NLRA, the Minnesota courts found and held that the activities of MEBA Local 101 violated the statutes and the public policy of the State of Minnesota and granted injunctive relief. The interpretation and application of State law by the Minnesota Supreme Court is conclusive in this Court; and no question of State law is or could be challenged by Petitioners. *E.g. Aero Transit Co. v. Commissioners*, 332 U. S. 495, 499-500.

Manifestly, in the foregoing situation neither the doctrine of federal pre-emption nor the doctrine of primary

administrative jurisdiction can be successfully invoked to stay or exclude the exercise of jurisdiction by the Minnesota courts. There is here no room for the application of either doctrine by inference or implication tortiously drawn from the existence or language of the National Labor Relations Act as amended; for we here deal with an area of labor relations which the Congress expressly excluded from that Act.

There is here no factual basis for Petitioners' argument based upon an assumption (refuted by the findings) that MEBA Local 101 might have two or three members who are not supervisors or, in any event, might engage in some wholly different activity for a wholly different purpose which might come within the NLRA as amended or some other federal statute. However, even if there had been support in the record for Petitioners' factual assumption, their argument would still be clearly erroneous. Congress did provide that nothing in the 1947 amendments should be interpreted to prohibit "any individual employed as a supervisor from becoming or remaining a member of a labor organization." (Section 14(a).) To interpret this language as meaning that a union of supervisors may circumvent the congressional exclusion of labor relations between supervisors and their employers from the NLRA, as amended, by the simple expedient of including some non-supervisor members (either in separate locals or on integrated basis), would be to attribute to the Congress an intent to do a futile thing, that is, painstakingly to exclude this area of labor relations from the NLRA, as amended, and simultaneously to nullify such exclusion by providing in Section 14(a), *first*, that nothing in the NLRA as amended should be held to prohibit supervisors from becoming or remaining members of a labor organization where permitted by State law and, *second*,

that nothing in that Act as amended or in State law should be effective to require employers to bargain collectively with supervisors who, in the opinion of Congress, represented the employer or management and could not properly be granted the rights provided for "employees" as defined in the Act. *Supra*, pp. 15-18.

Undoubtedly, a union, like a corporation or individual, may act in different capacities and for different purposes; and its rights and obligations may be measured by different law in one instance than in the other. Thus, a corporation, which is authorized both to administer trusts and to engage in commercial banking, is subject to different law, depending upon the situation and capacity in which it acts. In *A. H. Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2d Cir.), the court in discussing Sections 2(3), 2(5) and 14(a) of the NLRA, as amended, said:

> "In order to effectuate Congress' avowed intention to remove supervisors from the protections of the National Labor Relations Act, this definition must be interpreted to mean an organization of 'employees' covered by the collective bargaining agreement in question and which exists for the purpose of dealing with *their* employer. Otherwise individuals excluded by the Act could join unions which represent some 'employees' and gain the protections of the Act. Thus if MEBA were classified as a 'labor organization' for purposes of this action simply because some of its members who are not within this bargaining unit are statutory 'employees,' then supervisors could gain the protections of the Act by joining either vertically integrated unions or unions which, in some parts of the country, represent nonsupervisory personnel. This result was not intended by Congress." (l. c. 336.)

And further:

> "The legislative history of § 14(a) makes it clear that Congress intended the quoted clause to describe statutes which require employers to bargain collectively or be guilty of an unfair labor practice or *its state law equivalent*. The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them 'to the basis which they enjoyed before the passage of the Wagner Act.'
>
> * * * * *
>
> Bull can refuse to bargain, discharge the supervisors, and be guilty of no unfair labor practice or conduct proscribed by any other law, either national or local, relating to collective bargaining." (l.c. 339.)

Where the right of a State Court to exercise jurisdiction turns upon the question whether the subject matter fell within an area of labor relations which the Congress had excluded from the operation of the National Labor Relations Act as amended, this Court held that a State Court had and could properly exercise jurisdiction to decide the controversy. *Higgins v. Cardinal Mfg. Co.*, 188 Kans. 11, 360 P. 2d 456, cert. den. 368 U. S. 829; *Algoma Plywood Co. v. Wisc. Emp. Rel. Board*, 336 U. S. 301.

Benz, et al. v. Compania Naviera Hidalgo, 353 U. S. 138, was an action brought to recover damages under State law caused by an American union picketing a foreign ship operated entirely by foreign seamen under foreign articles, while the vessel was temporarily in an American port. This Court held that the failure of Congress expressly to make the federal Act applicable to wage disputes arising on foreign vessels between national and other countries when such vessels come within territorial waters of the United States, constituted an implied exclusion from the federal Act and, consequently, that the federal

Act did not bar a remedy under State law for such damages.

Manifestly, a contrary holding in the *Benz* case would not have been controlling or apposite in the instant case. However, the holding in the *Benz* case, that neither the doctrine of federal pre-emption nor the doctrine of primary administrative jurisdiction barred the application of State law in an area of labor relations which is excluded from the NLRA, if at all, only by implication, does emphasize the absurdity of arguing, as Petitioners do, that such doctrines prevent the States from exercising their jurisdiction in an area of labor relations which the Congress expressly excluded from federal regulation.[7]

---

[7] Since *Incres Steamship Co. v. International Mar. Wrks. Union*, 10 N. Y. 2d 218, 176 N. E. 2d 719 (cited Pet. Br. 18, fn. 12) is pending before this Court on a writ of certiorari, we deem it inappropriate to discuss the merits of that decision. Instead, we merely point out that the *Incres* case turns upon whether the doctrine of *implied exclusion* enunciated in the *Benz* case is applicable to the somewhat different factual situation presented in the *Incres* case. However that question may be decided by this Court, its decision is inapposite to the instant case which involves *any* area of labor relations that Congress *expressly excluded* from the operation of the NLRA as amended. The same observation applies to *Marine Cooks etc. v. Panama SS Co.*, 362 U. S. 365, which is also inapposite for the additional reason that it turned upon Section 4 of the Norris-LaGuardia Act, 29 U. S. C. §§ 101, 104.

CONCLUSION.

For each and all of the reasons stated in this brief, it is respectfully submitted that the decision of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

RAYMOND T. JACKSON,
JAMES P. GARNER,
1956 Union Commerce Bldg.,
Cleveland 14, Ohio,

EDWARD T. FRIDE,
1200 Alworth Building,
Duluth 2, Minnesota,
Counsel for Respondents.

Of Counsel:

BAKER, HOSTETLER & PATTERSON,
NYE, SULLIVAN, MCMILLAN,
HANFT & HASTINGS.

APPENDIX A.

Statutes Involved.

The relevant provisions of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, are set forth below.

Act of June 23, 1947, c. 120, § 1(a) and §§ 2(3), 2(5), 2(11) and 14(a) of Title I, 61 Stat. 136, 137, 138, 151; U. S. Code, Title 29, §§ 152(3), 152(5), 152(11) and 164(a).

"AN ACT

"To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

* * * * *

"SECTION 1. (a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

* * * * *

"TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

"SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

" 'DEFINITIONS

" 'SEC. 2. When used in this Act—

* * * * *

" '(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, * * * but shall not include * * * any individual employed as a supervisor, * * *.

* * * * *

" '(5) The term "labor organization" means any organization of any kind, or any agency or employee

representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

" '(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, *or* discipline other employees, *or* responsibly to direct them, *or* to adjust their grievances, *or* effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

" 'LIMITATIONS

" 'SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.' "

APPENDIX B.

Legislative History of Pertinent Amendments to The National Labor Relations Act Which Were Made by Title I of The Labor Management Relations Act, 1947.

A. Reports of Congressional Committees.

1. Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess.

"It is natural to expect that unless this Congress takes action, management will be deprived of the undivided loyalty of its foremen. There is an inherent tendency to subordinate their interests whereever they conflict with those of the rank and file. * * *

"* * * the bill does not prevent anyone from organizing nor does it prohibit any employer from recognizing a union of foremen. It merely relieves employers who are subject to the national act free from any compulsion by this National Board or any local agency to accord to the front line of management the anomalous status of employees." (p. 5)

* * * * *

"Section 14: This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as employees for the purpose of collective bargaining or organizational activity." (p. 28.)

2. House Report No. 245, H. R. 3020, 80th Cong., 1st Sess.

"The evidence before the committee showed this to be one of the most important and most critical problems. When Congress passed the Labor Act, we were concerned, as we said in its preamble, with the wel-

fare of 'workers' and 'wage earners,' not of the boss. It was to protect workers and their unions against foremen, not to unionize foremen, that Congress passed the Act." (p. 13.)

* * * * *

"So, by this bill, Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer'; what it again made clear in taking up H. R. 2239 in 1943 and in dropping it when the Board decided the Maryland Drydock case, and what, for a third time, it made clear last year in passing the Case bill by a majority of about 2 to 1 and in barely falling short of enough votes to override the President's veto of that bill.

"The bill does not forbid anyone to organize. It does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so. What the bill does is to say what the law always has said until the Labor Board, in the exercise of what it modestly calls its 'expertness,' changed the law: That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for *any* reason, he does not trust." (p. 17.)

B. Excerpts from Congressional Debates.

Statement by Senator Taft of Ohio:

"I shall try to summarize the changes which have been made. They are important. They make a substantial step forward toward the furnishing of equal bargaining power.

"The bill provides that foremen shall not be considered employees under the National Labor Relations Act. They may form unions if they please, or join

unions, but they do not have the protection of the National Labor Relations Act. They are subject to discharge for union activity, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act." 93 Cong. Rec. 3836 (1947).